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COURT OF APPEAL

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

JOSEPH A. LANE, CLERK

DIVISION: 1 DATE: 06/30/93

Guy Rollins

301 N.Lake Avenue

Suite 720C

Pasadena, CA. 91101

RE: Say & Say

vs.

S.c.l.a.

Castellano, Andrew

1 Civil B074299

Los Angeles No. BC059833

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

B074299

(Super. Ct. NO BC059833)

SAY & SAY and L. SHIEH,

Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent.

ANDREW CASTELLANO et al.,

Real Parties in Interest.

ORIGINAL PROCEEDING; Petition for Writ of Mandate.

Writ Denied.

Guy Rollins and James L. Andion for Petitioners.

No Appearance for Respondent, Severson & Werson and Mark J. Kenney for Real Party in Interest Francisco Araiza.

INTRODUCTION

On April 2, 1993, this court issued an order requiring petitioners and their counsel, Guy Rollins, to show cause before this court at 9:00 a.m. on May 25, 1993, why sanctions should not be imposed for filing the petition for a writ of mandate or prohibition in this matter. Neither petitioners nor Mr. Rollins saw fit to appear on May 25, although different counsel, James L. Andion, did file a written response on behalf of petitioners. We hold the petition was frivolous and impose sanctions of $5,000 each against

petitioner and Mr. Rollins, separately and individually.

FACTUAL BACKGROUND

In November 1992, counsel for petitioner Shieh filed a motion to disqualify Judge Edward Y. Kakita for cause; Judge Kakita did not respond. In December 1992, petitioner Shieh himself filed a statement of disqualification in which he complained that Judge Kakita "has completely ignored the facts and law, and has destroyed my cases and career" and detailed how Judge Kakita's adverse rulings demonstrate that he has conspired and continues to conspire with defendants (who include all 440 general partners of a law firm) against petitioner. According to petitioner, Judge Kakita would be a witness to testify as to how

all the Caucasian lawyers and judges were conspiring against Shieh. Judge Kakita filed a reply to this challenge, commenting that the charges were "outrageous."

On January 11, 1993, petitioners filed a third disqualification of Judge Kakita. On January 20, Judge Kakita ordered this document stricken, finding it was repetitive of two prior motions for disqualification.

On February 26, 1993, the Hon. Ted Millard, Assistant Presiding Judge of the Orange County Superior Court, sitting by assignment, denied the motions to disqualify Judge Kakita. In Judge Millard's words, "[t]his tripartite challenge to Judge Kakita is but one of many such challenges against different state and federal trial court judges that have made rulings that are

not to Mr. Shieh's liking." The judge assigned to hear one of these challenges termed it "'wholly frivolous and a sham,' as well as describing Mr. Shieh as being 'vexatious.' That ruling was made on or about June 17, 1992, and can best be described as an understatement. Mr. Shieh is a vexatious litigant whose campaign of litigation terror appears to be to accuse nearly every judge who has ever ruled against him of being 'biased' or a 'racist.'" Upon denying the challenges, Judge Millard ordered that petitioner and any of his counsel must first seek and obtain leave from the presiding judge, upon a showing of good cause, to file any further challenges for cause against Judge Kakita.

Petitioner Shieh challenged this order by seeking a writ of mandate; that petition was denied by

Division Two of this court in Shieh v. Superior Court (B073924, Marcyh 24, 1993); a petition for review was denied on April 21, 1993. On March 30, 1993, counsel for petitioners filed another petition for a writ of mandate or prohibition, again challenging Judge Millard's order.

DISCUSSION

Petitioners and their counsel are doing nothing with this second petition but seeking a second bite of the apple. This is the worst sort of forum shopping. Not only is this petition repetitive, but it is untimely. Judge Millard's order of February 26, 1993 was served by mail on March 4. Petitioners thus had ten days (plus five days for mail service) in which to file the instant petition. (Code Civ.

Proc., Section 170.3, subd. (d), 1013, subd. (a).) This requirement is absolute and inflexible. (Guedalia v. Superior Court (1989) 211 Cal. App. 3d 1156, 1159-1160, review den. Aug. 31, 1989.) Accordingly, the instant petition, filed on March 26, 1993, necessarily was untimely notwithstanding petitioners' request for coarification and reconsideration of Judge Millard's ruling.

The instant writ petition undeniably is frivolous. No attorney reasonably could have believed either that the purported "new facts" recited in this petition are anything of the sort or that it was timely filed. Petitioner Shieh is himself an attorney and thus must be held equally culpable with the counsel he selected to represent him in this matter. Petitioner Say & Say is an entity

controlled solely by petitioner Shieh. Moreover, this is part of a pattern of repeatedly relitigating the same issue, as evidenced by petitioner Shieh's extensive histroy in the trial and appellate courts, during which his actions repeatedly have been characterized as frivolous and he repeatedly has been denominated a vexatious litigant. Finally, given how well selttled the timeliness proposition is, there can be no reason for having filed the instant petition other than to cause respondents further unnecessary delay and expense. This "classic" instance meets both the subjective and the objective standards of In re Marriage of Flaherty (1982) 31 Cal. 3d 637, 649-650.

The petition for writ of mandate is denied. Sanctions are awarded against petitioner Shieh and

Guy Rollins, individually and separately, in the sum of $5,000 each. The sanctions are to be paid to counsel for real parties in interest within 10 days.

NOT TO BE PUBLISHED

SPENCER, P. J.

I concur:

ORTEGA, J.